



San Bernardino Associated Governments

472 North Arrowhead Avenue, San Bernardino, CA 92401

Phone: (909) 884-8276 Fax: (909) 885-4407

Web: www.sanbag.ca.gov



•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

DATE: January 29, 2003

TO: CONSULTANTS

FROM: Arlis Childs, Project Manager

SUBJECT: Important Information Regarding I-215 South Project RFQ Process

**LOCAL PREFERENCE REQUIREMENTS ARE BEING REVIEWED.
PLEASE MONITOR THE SANBAG WEBSITE DAILY FOR
ANNOUNCEMENTS REGARDING LOCAL PREFERENCE OR
CHANGES TO THE RFQ/SCOPE OF SERVICES.**

DATE: January 9, 2003

TO: Consultants

FROM: Gary W. Moon

SUBJECT: RFQs for Environmental and Engineering Services for the Interstate 215 (I-215) South Project

cc: Arlis Childs
Greg Hefter
Valerie Timmins
File

This letter is SANBAG's notification that two Requests for Qualifications (RFQ), regarding professional services for the I-215 South Project will be issued shortly. One RFQ will be issued to select a consultant to provide environmental services. The second RFQ will be issued to select a consultant to provide engineering services. The purpose of each RFQ and a brief description of the anticipated scope of services are as follows.

RFQ to provide environmental services – The purpose of this RFQ is to select a qualified candidate to provide environmental services consistent with developing an EIR/EIS culminating in a Record of Decision for the I-215 South Project. In addition, the consultant will be required to provide on-call services as needed. The consultant will be responsible for coordinating efforts with the engineering consultant, the San Bernardino Associated Governments/San Bernardino County Transportation Authority (SANBAG), the California Department of Transportation (Caltrans), the Riverside County Transportation Commission (RCTC), and the Cities of Grand Terrace, Colton, and San Bernardino.

RFQ to provide engineering services – The purpose of this RFQ is to select a qualified candidate to provide engineering services consistent with establishing a preferred alternative for the project. In addition, the consultant will be required to provide oncall services as needed. The consultant will be responsible for coordinating efforts with the environmental consultant, SANBAG, Caltrans, RCTC, and the Cities of Grand Terrace, Colton, and San Bernardino.

The general project limits are from Interstate 10 (I-10) to State Route (SR 60). **Please note that no materials (e.g. plans or studies) will be available for consultants to review.**

Interested firms are invited to submit Statements of Qualifications (SOQs) for either one or both contracts. It should be noted however, respondents that submit for both RFQs are required to submit a separate and independent SOQ for each RFQ.

Those firms or individuals intending to submit a Statement of Qualification (SOQ) should note the schedule contained in Section XI of the RFQ. It is our intention, subject to approval of the SANBAG Board, to have the selected firm under contract by **May 2003**.

Individuals and firms submitting SOQs for this project will be evaluated based on qualifications and experience on similar and relevant projects. Emphasis will be placed on the capabilities of key project individuals.

For each RFQ, the following will be posted on the SANBAG's website for your reference: the RFQ, ***draft*** Scope of Services, a sample contract, and SANBAG's Consultant Selection Policy. These items may be found on SANBAG's website (www.sanbag.ca.gov) under "Latest RFP/RFQ Postings." This information will be posted on the Internet site on or about **Wednesday, January 29, 2003**. Please regularly check the website for this information as well as schedule updates, scope changes, general questions and answers, and other additional information.

Eight (8) copies of the SOQ must be submitted to SANBAG's San Bernardino office by **12:00 P.M., Thursday, February 20, 2003**.

Proposals and correspondence shall be directed to:

Mr. Gary W. Moon
Director of Freeway Construction
San Bernardino Associated Governments
444 North Arrowhead Avenue, Ste. 203
San Bernardino, California 92401

All questions and comments regarding these Requests for Qualifications shall be directed to:

Mr. Arlis Childs
Project Manager
(909) 889-8611 x149

GWM:AFC:dmo

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY/
SAN BERNARDINO ASSOCIATED GOVERNMENTS
(SANBAG)**

REQUEST FOR QUALIFICATIONS

TO

**PROVIDE
ENVIRONMENTAL SERVICES**

FOR

INTERSTATE 215 (I-215) SOUTH PROJECT

IN

**THE CITY OF RIVERSIDE, RIVERSIDE COUNTY, and
THE CITIES OF GRAND TERRACE, COLTON, AND SAN BERNARDINO,
SAN BERNARDINO COUNTY**

Issued: January 29, 2003

**SAN BERNARDINO ASSOCIATED GOVERNMENTS/
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

REQUEST FOR QUALIFICATIONS

FOR

**ENVIRONMENTAL SERVICES
INTERSTATE 215 (I-215) SOUTH PROJECT**

I. INTRODUCTION

The San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Authority, is soliciting Statement of Qualifications (SOQ) from qualified firms for environmental services in support of the I-215 South Project. This project scope will involve environmental services consistent with obtaining the necessary environmental approvals for compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This will likely consist of developing Draft and Final Environmental Impact Reports (EIR) and Environmental Impact Statements (EIS), culminating in an approved Record of Decision (ROD) for the I-215 South Project. In addition, the consultant will be required to provide on-call services as needed.

Voters in San Bernardino County approved Measure I in November 1989 enacting a one-half cent sales tax for transportation purposes over a 20-year period. SANBAG, which has existed as the County Transportation Commission since 1975, is designated as the Agency to administer the program.

All contracts will be awarded without discrimination based on race, religion, color, age, sex, or national origin.

The selection criteria for this RFQ have been altered from that of the typical SANBAG selection. Typically SANBAG has placed emphasis on a Consultant's understanding of the specific project. Because of the nature of this project, SOQs will be judged on the firm's past project experience and on the relevant experience of personnel proposed. Consultants are discouraged from doing extensive research, conceptual layouts, or environmental analysis. Consultants should, however, become familiar with existing conditions within the general project limits. **Major emphasis will be placed on the Consultant's past experience and the relevant experience of proposed personnel when scoring and selecting a consultant. The presentation of extensive geometric layouts or other specific project studies in the SOQ or formal presentation will be viewed negatively by the selection panel.**

II. PROJECT AND SERVICES DESCRIPTIONS

SANBAG is seeking the services of a qualified environmental consultant to provide environmental services consistent with obtaining the necessary environmental approvals for CEQA and NEPA compliance. This will most likely consist of developing Draft and Final EIR/EIS documents, culminating in an approved ROD for the I-215 South Project, as described below. Environmental information may be used in a Project Report (PR). The PR will be developed under a separate engineering contract, thus, close coordination with the engineering consultant will be required. Further, the selected environmental consultant will provide on-call support as needed throughout the duration of the project.

The general project limits extend along I215 from just south of the existing I215/SR-60 interchange in Riverside to Orange Show Road, north of the existing I-215/I-10 interchange in San Bernardino. The project limits will also include an area on SR-60 extending east and west of the existing SR-60/I-215 interchange to consider HOV flyovers connecting the two freeways. The project limits are within the Cities of Riverside, Grand Terrace, Colton, and San Bernardino.

See the scope of services included with this RFQ package for a more detailed description of the project requirements.

III. MATERIALS FURNISHED BY SANBAG

Please note that materials (e.g. project specific plans or studies) will **NOT** be available for consultants to review.

IV. CALTRANS/SANBAG/RCTC RELATIONSHIP

SANBAG will work closely with Caltrans and RCTC on the I-215 project. SANBAG will be responsible for, and will be the **sole** point of contact for all contractual matters. Caltrans will be responsible for providing technical oversight of the consultant's work efforts, through SANBAG. The consultant shall take direction **only** from SANBAG and shall regularly inform SANBAG of progress and of all outstanding issues.

V. CONTRACT TYPE

A task order based, not to exceed cost reimbursable plus percentage **earned** fee contract, will be issued. Any services provided by the Consultant which are not specifically covered by a Contract task order will not be reimbursed. It is the Consultant's responsibility to recognize and notify SANBAG when services not covered under the Contract task order have been requested or are required.

The terms of the Contract will be effective for the duration of the project.

VI. POLICY GOVERNING MINORITY BUSINESS OPPORTUNITIES

No goals have been established for contracts with Disadvantaged Business Enterprises (DBE), Women-owned Business Enterprises (WBE), or Disabled Veterans Business Enterprises (DVE) in contracting activities. Because Measure I and Measure A funds, and not Federal funds, will be utilized for the contract, no goals have been established.

VII. STATEMENT OF QUALIFICATIONS INSTRUCTIONS

Statement of Qualifications (SOQ) will be accepted until **12:00 PM, February 20, 2003**. Eight (8) copies are required. SANBAG reserves the right to accept or reject late SOQ's at its discretion. Acceptance of a late submittal shall not be construed to mean that SANBAG will accept **any** late SOQ. SOQ's shall be delivered to:

Mr. Gary Moon
Director of Freeway Construction
San Bernardino Associated Governments
444 North Arrowhead Avenue, Suite 203
San Bernardino, CA 92401

SOQ's must contain the information listed below and must be compiled in the following format:

A. Cover Letter

Provide the following information:

- Summary description of the work to be performed by firm and each subconsultant firm proposed for the project and an estimate of the percentage of work to be performed by each firm.
- The location of the offices where the services are to be performed. If services are to be shared among firms and offices at different locations, indicate where each office is located and what services are to be performed in each office. For field personnel provide the location of the office where they will be based and from which office they will be managed.
- In accordance with SANBAG Policy No. 11000-R8, Sect. 7.1.2.f, provide a response to the following question: Has your firm ever been terminated from a contract? If the answer is yes, see item C below.
- A memorandum from a principal from each subconsultant firm indicating the specific portion of services the subconsultant will be performing.

B. Local Presence Report:

For consultant and each subconsultant proposing to perform services from their San Bernardino County Office, provide the following business activity information:

- Firm name, address, telephone number, and fax number.
- Name of office principal and title.

- Date office was established in San Bernardino County.
- Number of personnel employed in the San Bernardino office.
- Approximate percentage of work performed on projects within San Bernardino County.
- Representative projects completed within San Bernardino County, date completed, and approximate billings.
- Number of senior management and regular employees working full time out of the San Bernardino County Office.
- Names of personnel proposed to be engaged on the contracted services and their county of residence (informational purposes only).

See SANBAG's Local Preference Policy and Local Presence Report sample format (enclosed).

C. Contract Termination Circumstances:

If consultant has ever been terminated from a contract, describe the facts and circumstances in detail.

D. Organizational Chart:

- Show the relationships between personnel and support staff who are expected to participate on the project.
- For each person, indicate the firm with whom they are employed.
- Show the aspects of the services each person will be responsible for performing.

E. U. S. General Services Administration Standard Form SF255:

“Architect-Engineer and Related Services Questionnaire for Specific Project”. The Form SF255 must conform to the following format:

1. Provide a separate Form SF255 for the prime consultant and each subconsultant. Section 9 is not required. Subconsultants need not supply Sections 6 and 10.
2. Prime consultants should list subconsultants in Section 6.
3. List key personnel in Section 7. Section 7 must conform to the following requirements:
 - Every person whose resume is provided in Section 7 must also be shown on the organizational chart. Resumes of persons who are not shown on the organization chart will not be considered.
 - Section 7b must describe the function the person will be expected to fulfill in connection with the project.
 - Section 7f must list the person's active registrations in California, with the California Registration Number. Personnel (Project Managers /Engineers) in

responsible charge of engineering services must be registered Civil Engineers in the State of California. Personnel in responsible charge of surveying services must be registered land surveyors or have a Civil Engineer license to do land surveying in the State of California.

- Section 7g should provide a brief history of each person's relevant project experience, including descriptions of his/her role and tasks that he/she performed on each project. Also, identify key tasks each person is expected to perform for these projects under his/her assigned function.

4. Section 8 should conform to the following requirements:

- Projects listed in Section 8 must be projects worked on by personnel shown on the organizational chart and whose resumes are included in Section 7. For each project listed, the personnel included in Section 7 who worked on the project, and their project position must be shown.
- In Section 8b, describe the nature of the firm's responsibility and indicate whether the firm was the prime consultant or a subconsultant.
- In Section 8c, include the owner's telephone number and the name of a contact person who can provide a reference. Also include the name and telephone number of the primary contact for the prime consultant, if necessary. Projects without references and telephone numbers will not be considered. List no more than ten projects.
- In Section 8e, indicate the project value, the contract value, and the respective values (project and contract) for which the firm was responsible.
- Additional information may be provided in Section 8 to highlight or expand on experience from projects that are especially applicable to the proposed Scope of Services, including an indication of the scope of related services for which the consultant was responsible.

5. Section 10 typically requires the CONSULTANT to provide a detailed discussion of the work tasks and management activities necessary for project completion, **however**, as stated in the Introduction, CONSULTANT shall **only** provide their understanding of the existing conditions within the general project limits.

F. Contract Comments:

Provide a written discussion of any objections or concerns relative to the Terms and Conditions of SANBAG's contract. Please note that SANBAG reserves the right to disqualify any consultant that does not provide a complete written discussion of its contractual objections or to disqualify any consultant based on objections that SANBAG considers non-negotiable. SANBAG does not anticipate making substantive changes to its Terms and Conditions.

G. Entire Statement of Qualifications:

The Consultant's SOQ package shall be limited to 40 (8 1/2" x 11") pages single-sided. The page limit does not include the outside cover, section dividers, cover letters and subconsultant commitment memorandum, local presence reports, contract comments, or duplication of the organizational chart. SOQ's that do not contain the required information or do not contain the required number of copies, eight (8), may not be accepted.

H. Changes:

During the selection process, any changes in key consultant or subconsultant personnel proposed in the SOQ must be brought to the attention of SANBAG immediately.

VIII. CONSULTANT SELECTION

The Primary objective of SANBAG is to select highly qualified firms to perform necessary professional services for SANBAG at a fair and reasonable cost. Firms may obtain a copy of SANBAG's Contracting and Procurement policy by contacting SANBAG. In addition, SANBAG has established the following criteria for the selection process:

- A. The selection process shall be fair, open, and competitive.
- B. The selection of the consultant firms will be based on clearly stated objectives.
- C. Selection of private consultants/firms shall be based upon demonstrated competence, professional qualifications, experience, and capabilities to perform the required services at a fair and reasonable price to SANBAG, rather than competitive bidding process.
- D. Firms located in San Bernardino County shall receive significant preference in the selection process in order to encourage business to locate and remain in San Bernardino County.
- E. Upon review of the SOQ's, a shortlist of firms will be invited to prepare for an interview. The pending contract will be awarded to the responsible, responsive firm best conforming to the RFQ, and is in the opinion of SANBAG, most advantageous to SANBAG. SANBAG reserves the right to reject any and all SOQ's and to negotiate with any responsible, responsive firm. SANBAG is under no obligation to issue contracts for the subject services.

IX. NEGOTIATIONS AND ENGAGEMENT

Following the selection of a consultant, the selected firm will submit a cost proposal and participate in contract negotiations with SANBAG staff. Please refer to the attached consultant selection schedule in Section XI. The final contract and Scope of Services will be negotiated. Consultants are **required** to include in their SOQ any comments relating to the Scope of Services and/or the Terms and Conditions of SANBAG's standard contract or to state that there are no comments. SANBAG reserves the right to disqualify any firm that does not provide written discussions of any disagreements it has relative to SANBAG's Terms and Conditions. SANBAG does not anticipate making any substantive changes to its Terms and Conditions.

X. CONFLICT OF INTEREST

The selected consultant will not be prevented from participating in future projects to the extent that no direct conflict of interest exists at the time. Consultants currently under contract on SANBAG projects are not specifically precluded from participating in this RFQ. In accordance with Caltrans directives, firms responsible for a project's design may not directly participate in construction inspection of that project. The determination of a conflict of interest, direct or incidental, shall be at the discretion of SANBAG.

XI. SCHEDULE FOR CONSULTANT SELECTION

Issue Request for Qualifications	January 29, 2003
Statement of Qualifications Due	February 20, 2003
Shortlist and Notify Consultants	February 28, 2003
Interview Shortlisted Consultants	March 14, 2003
Select Consultant	March 14, 2003
Contract Cost Proposal Due	March __, 2003
Major Projects Approval (anticipated)	April __, 2003
SANBAG Board Approval (anticipated)	May __, 2003
Notice to Proceed (anticipated)	May __, 2003

Dates are subject to change. Schedule updates will be posted on SANBAG's website: www.sanbag.ca.gov under "Latest RFP/RFQ Postings."

Contact List:

Questions/Comments	Arlis Childs	(909) 889-8611 x149
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Sample Document - other formats may be submitted

LOCAL PRESENCE REPORT
CONSULTANT BUSINESS ACTIVITY INFORMATION

TO: SAN BERNARDINO ASSOCIATED GOVERNMENTS

RE: REQUEST FOR QUALIFICATIONS
CONSULTING SERVICES
INTERSTATE 215 SOUTH ENVIRONMENTAL SERVICES

Name of Firm _____

Address _____

Phone _____ FAX _____

Name of Office Principal _____

Title _____

Date Local Office Established _____

Number of personnel employed at this office _____

Approximate volume of work performed on projects within San Bernardino County _____ %

Representative projects completed within San Bernardino County:

<u>Project</u>	<u>Date completed</u>	<u>Approx billings</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

(Use additional sheets if required)

CONSULTANT BUSINESS ACTIVITY INFORMATION (cont)

Name of Firm_____

Indicate number of senior management and regular employees working out of the San Bernardino office:

<u>Position</u>	<u>Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FOR INFORMATIONAL PURPOSES ONLY

(The following shall not be used in determining local preference credit)

Personnel proposed to be engaged on the contracted services:

<u>Name</u>	<u>County of Residence</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Use additional sheets if required)

DRAFT

Attachment "A"

Scope of Services

By and between

**San Bernardino Associated Governments/
San Bernardino County Transportation Authority**

And

TBD

To

Provide Environmental Services

For

Interstate 215 (I-215) South Project

Cities of Riverside, Grand Terrace, Colton, and San Bernardino, California

Scope of Services

OVERVIEW

The San Bernardino Associated Governments (SANBAG), in cooperation with the California Department of Transportation (CALTRANS), and the Riverside County Transportation Commission (RCTC) will utilize the services of CONSULTANT to provide environmental support services for the I-215 South project encompassing an area from south of the I-215/SR-60 interchange to an area north of I-215/I-10 interchange in the cities of Riverside, Grand Terrace, Colton, and San Bernardino.

Coordination of CONSULTANT, SANBAG, CALTRANS, and RCTC will be accomplished through a CONSULTANT Project Manager, a SANBAG Contract Manager or his designee, and a CALTRANS Project Manager.

The SANBAG Contract Manager for this contract shall be:

Mr. Gary W. Moon
Director of Freeway Construction

CONSULTANT shall be required to perform all professional and technical services consistent with obtaining the necessary environmental approvals for compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This will most likely consist of developing Draft and Final Environmental Impact Reports and Statements (EIR/EIS) culminating in an approved Record of Decision (ROD). Additional on-call environmental support may also be required on an as-needed basis.

Project Location and Description

At this time, the specific project limits and general project description or type are unknown, but will be developed during the engineering/environmental efforts associated with the project. Concurrent with the environmental effort will be an engineering effort under separate contract. The engineering and environmental efforts will jointly result in a preferred project alternative. This scope of services relates to developing an EIR/EIS culminating in an approved ROD for the preferred alternative.

The general project limits extend from just south of the existing I-215/SR-60 interchange to Orange Show Road, north of the existing I-215/I-10 interchange. The project limits will also include the area on SR-60, just east and west of the existing SR-60/I-215 interchange to consider HOV flyovers connecting the two freeways. The project is within the Cities of Riverside, Grand Terrace, Colton, and San Bernardino.

APPLICABLE STANDARDS

Deliverables and related material shall be prepared in accordance with current CALTRANS and Federal Highway Administration (FHWA) regulations, policies, procedures, manuals, and standards.

General Guidelines and Services to be performed by Consultant

CONSULTANT will be responsible for the services outlined in this Scope of Services. CONSULTANT services shall conform to the standards, criteria, and requirements of this Scope of Services. In addition, CONSULTANT may be required to provide on-call services as part of this project that shall also conform to the standards, criteria, and requirements of this Scope of Services.

- A. Services provided by CONSULTANT will be on a task order basis. Written approval to proceed shall be obtained from SANBAG by CONSULTANT prior to providing services for each task order. CONSULTANT shall not be compensated for services performed without prior written approval to proceed. Similar procedures shall be followed for on-call services.
- B. For services in which CONSULTANT has written approval to proceed, CONSULTANT will not make changes resulting in the addition, deletion, or revision to services without further written approval from SANBAG.
- C. CONSULTANT shall carry out the directions as received **only** from SANBAG's Contract Manager, or his/her designee. In addition, CONSULTANT shall cooperate with CALTRANS, other agencies, and other consultants providing services for this project and for adjacent projects, as necessary.
- D. It is not the intent of the foregoing paragraph to relieve CONSULTANT of professional responsibility during the performance of this Scope of Services. In those instances where CONSULTANT believes a better solution to a problem is possible or consultant has a recommendation, CONSULTANT shall promptly notify SANBAG's Contract Manager of CONSULTANT'S opinions with supporting evidence thereof.
- E. CONSULTANT shall have sole responsibility for the accuracy and completeness of all deliverables and all supporting documents. CONSULTANT shall independently check all deliverables and supporting documents prior to any submittal. All deliverables will be reviewed by CALTRANS, SANBAG, RCTC and/or SANBAG's designee for conformity to the project.
- F. All deliverables and supporting materials furnished under this Scope of Services shall be of a quality acceptable to SANBAG and CALTRANS. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct and checked. The appearance, organization and content of all deliverables and supporting materials shall be to CALTRANS standards.

- G. The CONSULTANT shall maintain a set of project files that are indexed in accordance with CALTRANS' Project Development Uniform File System.
- H. CONSULTANT shall not suspend performance of CONSULTANT services contract with SANBAG during the negotiations of any change orders except as they may be directed by SANBAG. CONSULTANT shall perform all changes in accordance with the terms and conditions of CONSULTANTS contract with SANBAG.
- I. At the completion of this Scope of Services all electronic files and original correspondence relating to the Project shall be turned over to SANBAG who will then forward said files to CALTRANS. This includes all deliverables, working data, field data, background information and all other related information.
- J. CONSULTANT shall employ quality control procedures that identify potential risks and uncertainties related to construction of the Project. Risks that may be encountered include, but are not limited to, impacts to adjacent properties, public safety, and environmental considerations. If at any time during the performance of this Scope of Services, CONSULTANT observes, encounters, or identifies any circumstance that could pose potential risk, CONSULTANT shall notify SANBAG.
- K. CONSULTANT shall coordinate with CALTRANS and all other agencies involved or potentially impacted by the Project. CONSULTANT shall inform SANBAG prior to all contacts, meetings, and correspondence with CALTRANS or any other agencies.
- L. All studies, reports and deliverables will employ metric units where applicable or necessary.

ENVIRONMENTAL SUPPORT SERVICES SCOPE

The CONSULTANT shall provide both technical and administrative environmental services consistent with obtaining the necessary environmental approvals for compliance with CEQA and NEPA. This will most likely consist of developing Draft and Final EIR/EIS documents culminating in an approved ROD. It is anticipated a combined CEQA/NEPA environmental document will be prepared. CONSULTANT will be responsible for requirements and/or special conditions that may facilitate project approval/certification with a combined NEPA/CEQA document. Additionally CONSULTANT will be required to provide on-call environmental services as needed.

It is not the intent of the following paragraphs to relieve CONSULTANT of professional responsibilities during the performance of this Scope of Services. In all instances where CONSULTANT believes this Scope of Services has not identified requirements that may be pertinent to clearing the project environmentally, CONSULTANT shall promptly notify SANBAG's Contract Manager of CONSULTANT'S opinions with evidence thereof.

CONSULTANT shall provide a project approach or management plan that defines the basic schedule and work tasks. This plan will be developed in coordination with the engineering consulting firm which will be concurrently under contract and will be refined to meet the objectives of the various and interested parties.

EIR/EIS Process, Document Content and General Activities

CONSULTANT shall follow a work process that ensures the objectives of the local agencies involved and that of state and federal agencies are met. Additionally, any and all legal and procedural requirements for state and federal agencies must be met. This process may include but not be limited to the following general activities.

- Preparing an Environmental Assessment if needed.
- Publishing applicable notices and/or sending notices to various agencies and other interested parties.
- Developing a detailed scope definition of the EIS/EIR document.
- Preparing and circulating the Draft EIS/EIR.
- Publishing various notices and filings of the Draft EIS/EIR.
- Participating in various public meetings.
- Responding to comments on the Draft EIS/EIR.
- Finalizing the EIS/EIR Document.
- Publishing of various notices and filings of the Draft EIS/EIR.
- Providing support through final agency decision, "Record of Decision" and project certification.
- Providing support for any required or desired coordination meetings and activities.

The EIR/EIS document will include various chapters, sections, studies and appendices. Information included for the document may be gathered from many sources as well as studies and analysis that CONSULTANT may perform. The following is a listing of the content that may be included in the document. CONSULTANT should be aware, however, that the EIR/EIS document may require additional information to what is presented in the following.

- Summary section which may include information on project location and background, the current environmental setting, agency coordination, project alternatives and discarded alternatives, project purpose and a summary of impacts..
- Statement regarding the project purpose and need. This chapter/section may include information on current operational deficiencies, current and future traffic conditions and project objectives.
- A section on the preferred alternative and how it was selected.
- A chapter on the affected environment which may include information on aesthetics, geology, soils analysis, hydrology, flood plains, wetlands, cultural resources, air quality, noise, land use, parks, hazardous waste, traffic circulation and socioeconomic aspects. Additionally, the environmental consequences (effects) and mitigation measures of the foregoing should be addressed. CONSULTANT may

also be required to address unavoidable adverse environmental impacts, the relationship and cumulative impacts verses long term productivity of the environment, growth inducement and cumulative impacts thereof.

- Though the EIR/EIS document requirements are similar, a section dealing with CEQA “findings of significant effects” may be required. CONSULTANT must also be aware of any and all other CEQA specific requirements.
- If needed, a section on 4 (f) properties, including descriptions, property owner and a public agency consultation/coordination summary should be included.
- The EIS/EIR document may also include information on agency/organization and public consultation, persons that were involved with the EIR/EIS document preparation, technical appendices and otherwise, a list of required permits, a bibliography and index.
- Engineering analysis, environmental documents and RODs for the two adjacent projects. One of the projects is located north of the I-215/I-10 and is known as The I-215 North Project. The second project, known as The 60/215/91 Interchange project, is located in Riverside.
- Engineering analysis of the concurrent engineering contract for The I-215 South Project.
- Existing Land Use Inventory
- Possible existing biological surveys/inventories
- Inventory of section 4 (f) properties
- Existing housing surveys
- Public services surveys

Technical Studies

CONSULTANT may be required to perform technical studies including but not limited to the following.

- Air quality
- Hazardous waste
- Noise
- Biological resources
- Cultural resources
- Water quality
- Visual impact study including preparation of exhibits and participation in public meetings.
- CONSULTANT may also be directed to analyze potential growth inducing effects, including as the project’s potential to cause growth which results in additional traffic volumes or the construction of new housing or retail/commercial space in the surrounding area.
- Potential effects of the project on endangered species may also need to be examined.
- CONSULTANT may be required to prepare an environmental checklist, which may include analysis to impacts to physical, biological and social/economic effects to

determine the mandatory finding of facts for the project. CONSULTANT shall provide written narrative to support the checklist.

Submittal of Studies, Reports and other deliverables

1. All deliverables shall be prepared in accordance with CALTRANS and FHWA requirements. CONSULTANT shall submit all deliverables to SANBAG, RCTC and CALTRANS for review.
2. CONSULTANT shall respond to all comments received from SANBAG, RCTC, FHWA and CALTRANS and resubmit deliverables as directed.
3. CONSULTANT shall support any and all studies, analysis and requirements needed to successfully complete the environmental requirements of the project.

FURNISHED MATERIALS

There are no up-to-date, project specific materials, such as a Major Investment Study (MIS) or Project Study Report (PSR), available for review. CONSULTANT may request other materials that can be used as a resource for this project, such as existing structure As-Builts. If available, SANBAG, CALTRANS, RCTC and/or other agencies will submit materials as requested.

ADMINISTRATION

SANBAG Project Management and Administration

- A. As part of their management activities SANBAG shall:
1. Conduct ongoing reviews of CONSULTANT's progress in performing the work and furnish technical comments in a timely manner.
 2. Review certain types of correspondence such as, work requests to subconsultants, initial contact letters, sensitive correspondence, and other letters as necessary.
 3. Coordinate the distribution of public information.
 4. Review CONSULTANT's Quality Control Plan and CONSULTANT's conformance to its Quality Control Plan.
 5. Provide a focal-point contact for all questions, requests, and submittals.
 6. Review the Project Control documents (including subconsultants) submitted by CONSULTANT to ensure their understanding of the level of information required, reporting procedures, report cycle, and the intended use of each.

7. Review CONSULTANT's detailed Critical Path Method (CPM) Logic Network Schedule; note any additions, deletions, or other changes; and return it to CONSULTANT with comments for revision.
8. Receive and review monthly progress reports from CONSULTANT.
9. Review with CONSULTANT, requests for change orders and/or extensions of time when such requests are determined to be necessary.
10. Have final review and approval over all contractual payments and changes.

CONSULTANT Project Management and Administration

- A. CONSULTANT management activities include, but are not limited to:
 1. Establishing, furnishing, and maintaining suitable office facilities to serve as the Contract office for the duration of the Contract in the location specified in CONSULTANT's proposal.
 2. Maintaining an adequate staff of qualified support personnel to perform the work necessary to complete the Project.
 3. Establishing internal accounting methods and procedures acceptable to SANBAG for documenting and monitoring Contract costs.
 4. Providing cost-to-date, schedule, progress, staffing, and related data to SANBAG as a part of the regular monthly progress and payment process.
- B. CONSULTANT's work shall be performed and/or directed by those key personnel identified in their proposal. Any changes in the indicated key personnel shall be subject to prior review and approval by SANBAG in writing. Any change in CONSULTANT's officer-in-charge of the Services, as described in the General Terms and Conditions of this Contract, shall be subject to prior review and approval by SANBAG.
- C. Due to the nature and scope of the required services, it may be desirable for the CONSULTANT to subcontract portions of the Services. Adding Subconsultants to the original proposal team must be approved in writing by SANBAG prior to initiation of any Services. The volume of Services performed by the subcontractors shall not exceed 49 percent of the total Contract value. Throughout this effort CONSULTANT shall be the single source of contact and management of all subcontractors. Subcontractor management will include the coordination time required for all aspects of the project including design, processing, and accounting.
- D. CONSULTANT shall provide to SANBAG copies of all written correspondence between CONSULTANT and any party pertaining specifically to the Project. Copies

shall be furnished within five calendar days of receipt of said correspondence from any party, or five calendar days prior to mailing of correspondence to any party for review. CONSULTANT is also responsible for recording and distributing the minutes of all meetings pertaining to the Project at which CONSULTANT is present.

- E. CONSULTANT shall give written notice to SANBAG within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might, under reasonable foreseeable circumstances, result in delay for which CONSULTANT may request an extension of time to complete Services.

Project Controls

- A. As part of the Project Controls effort CONSULTANT shall, at the introductory meeting, present SANBAG with samples of their proposed project control documents for SANBAG's review. These documents shall include, but are not limited to:
 - 1. Bar Chart(s) Schedules
 - 2. Progress Curve(s)
 - 3. Sample Amendment Format
 - 4. Sample Narrative Format(s)
 - 5. Sample Estimate Format(s)
 - 6. Earned Value Cost Report
- B. CONSULTANT's Project Control System shall be able to:
 - 1. Determine the critical path for the Services in Contract.
 - 2. Forecast dates for intermediate milestones and project completion.
 - 3. Provide a clear format to incorporate progress data on each activity.
 - 4. Provide reports showing actual progress compared to scheduled (planned) progress, and actual cost of services performed compared to (1) budgeted costs for services performed and (2) budgeted cost for services scheduled.
 - 5. Forecast possible delays and/or resource shortages.
 - 6. Provide a basis for preplanning, including resource usage to recover from delays, allow schedule improvement, or accommodate other changes in the work.
 - 7. Provide projected manpower requirements and dollar costs based on current performance.

8. Provide current project cost estimate information.
 9. Provide all the estimates necessary to assist in confirming the construction budget.
- C. Within 15 working days (or as requested by SANBAG) of assignment of services the CONSULTANT shall submit to SANBAG for their review, a Bar Chart Schedule showing the Critical Path and identifying all project development activities and milestones. SANBAG will review these documents and return them to CONSULTANT with notes and comments as soon as possible in order to validate the planning and cost control procedures within the first calendar month of performance period.
- D. As the Contract work progresses, CONSULTANT may discover the need to change the schedule to improve productivity or accommodate new or changed conditions. Any proposed change to the schedule shall be presented to SANBAG for review and validation prior to incorporation in the schedule.
- E. CONSULTANT shall report in a timely manner, through correspondence or progress reports, whenever it appears that approved schedules will not be met whether or not the reasons are within the CONSULTANT's control. In the event the Scope and Schedule of the Services is modified, and the modified Schedule is approved by SANBAG, CONSULTANT shall submit a revised Milestone Schedule. CONSULTANT shall perform the Services in accordance with the latest approved revision Milestone Schedule.

Monthly Progress Reports

- A. On a monthly basis, CONSULTANT shall prepare and submit to SANBAG a monthly status report that indicates the work progress achieved during the period. The report shall summarize the actual work progress compared with estimated progress and will identify problem areas, provide evaluations, recommendations and an outline on the process which CONSULTANT, and SANBAG will follow to rectify the problem(s). The progress report shall be submitted with the monthly invoice. As a minimum, the monthly report should address the following specific areas:
1. Time related project status via a bar chart schedule
 2. Physical progress
 3. Amendment summary history
 4. Narrative status report
 5. Earned Value Report

6. Graphical comparisons for actual progress vs. earned and planned progress for: physical (%complete), performance (hours complete) and cash flow.
- B. CONSULTANT shall have the ability to monitor and update its Detailed Project Control Schedule during the execution of the work and shall submit at each Progress Meeting, an updated four-week, horizon schedule to be used in monitoring the progress of the work.
- C. A Progress Meeting between CONSULTANT, CALTRANS, and SANBAG shall be held, at minimum, on monthly basis to discuss the design progress, potential problems, plans for the next period, and other progress issues. SANBAG and CALTRANS will establish with CONSULTANT the dates and times of these meetings. Three calendar days prior to each progress meeting, CONSULTANT shall provide SANBAG with a typewritten agenda for the meeting. CONSULTANT shall prepare typewritten meeting minutes and submit them to SANBAG and CALTRANS within seven calendar days after the meeting. The minutes shall indicate issues discussed and the resolution or action required to resolve any issues.
- D. Project Coordination Meetings may be called by SANBAG, CALTRANS or the CONSULTANT at any time that any party requires discussion of Project issues. CONSULTANT shall prepare minutes of the meeting and submit them to SANBAG and CALTRANS.

Quality Assurance

- A. CONSULTANT has total responsibility for the accuracy and completeness of all deliverables and any other work assigned to CONSULTANT. All services and deliverables furnished under this Scope of Services shall meet that responsibility through the implementation of a Quality Assurance Plan. CONSULTANT's Quality Assurance Plan shall be in effect throughout the entire Contract and, at minimum, shall establish the process necessary to ensure the following:
 1. All deliverables and services shall be provided in a professional manner and meets the standards set forth herein.
 2. CONSULTANT shall maintain a set of project files that are indexed in accordance with CALTRANS' Project Development Uniform File System.
- B. CONSULTANT shall submit to SANBAG within 30 calendar days after receipt of Notice to Proceed two copies of their Quality Assurance Plan. SANBAG will review the plan established by CONSULTANT to determine if quality assurance procedures are adequate and appropriate to the complexity of the project requirements. Review comments will be returned to CONSULTANT within 14 calendar days. If appropriate, the revised plan, which incorporates the comments of SANBAG, should be resubmitted within seven calendar days of receipt of comments.

- C. Evidence that the Quality Assurance Plan is functioning will be periodically confirmed by SANBAG. Deliverables that do not conform to the approved plan will be returned to CONSULTANT without review by SANBAG.

Reproduction Services

CONSULTANT shall provide the reproduction services required for the projects inclusive of the number of individual sets to be delivered for the submittal tasks outlined in this Scope of Services.

Submittal and Reviews

- A. Reports prepared by CONSULTANT shall be submitted in draft form, and opportunity provided for SANBAG and CALTRANS to review and direct revisions prior to formal submittal. If so requested by SANBAG and CALTRANS, CONSULTANT shall make other submittals in draft form to provide opportunity for review and revisions.
- B. If CONSULTANT fails to submit the required deliverable items set forth in this Scope of Services, SANBAG shall have the right to withhold payment and/or terminate CONSULTANTS contract in accordance with the provisions entitled "Termination" included in this Contract.

CONTRACT NO: 03-045

EFFECTIVE DATE: May __, 2003

by and between

**San Bernardino Associated Governments/San Bernardino
County Transportation Authority**

and

TBD

To

Provide Environmental Services

for

Interstate 215 (I-215) South Project

in the

**Cities of Riverside, Grand Terrace, Colton, and
San Bernardino, California**

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CONTRACT
FOR
ENVIRONMENTAL SERVICES

This Contract, entered into this _____ day of _____ 2003, by the firm of _____
(hereinafter called CONSULTANT) whose address is:

and San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereinafter called SANBAG) whose address is:

472 North Arrowhead Avenue
San Bernardino, California 92401

Whereas, SANBAG desires CONSULTANT to perform certain technical services as hereinafter described and CONSULTANT desires to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

Article 1 Description of Services

CONSULTANT agrees to perform Services set forth in Attachment "A", in accordance with high professional engineering and land surveying standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Services performed hereunder shall be completed to the satisfaction of SANBAG, with their satisfaction being based on prevailing engineering standards.

Article 2 Performance Schedule and Force Majeure

- 2.1 The Period of Performance by CONSULTANT under this Contract shall commence on _____ and shall continue in effect for five (5) years or until work is completed.
- 2.2 CONSULTANT shall not be considered in default in the performance of its duties and obligations with respect to schedule performance to the extent that the

performance of any obligation is prevented or delayed by Force Majeure. In any event, CONSULTANT shall use its best efforts to minimize any schedule extension or additional cost to SANBAG resulting from such delay. Force Majeure includes, but is not limited to, acts of God or of the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter initiatives, legal actions, changes in law, fires, floods, labor disputes, freight embargoes, unusually severe weather and interference caused by, or failure to act of, SANBAG, SANBAG'S consultants (other than CONSULTANT), or other third parties. In every case, the failure to perform must be completely beyond the control and without the fault or negligence of CONSULTANT.

Article 3 Contract Price and Cost Principles

- 3.1 Full compensation to CONSULTANT for full and complete performance of Services, compliance with all the terms and conditions of this contract, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by SANBAG), the total compensation to CONSULTANT shall not exceed the amounts set forth in 3.2 below.
- 3.2 The total cost for the overall project shall not exceed \$_____with a contingency of \$_____. Utilization of the contingency is not permitted unless directed in writing by SANBAG Project Manager. Services to be provided under terms of this contract are to be provided on a task order basis and compensated for as set forth in Attachment "B" which is incorporated herein by reference. Task order budgets will be negotiated separately and shall include CONSULTANT'S fee. CONSULTANT'S fee for services is included in the total estimated contract cost and shall be based on a fixed percentage rate, as noted in Attachment "B". CONSULTANT'S fee will be paid by SANBAG on an **earned** basis as set forth in Section 6.5.
- 3.3 CONSULTANT'S overhead rates will be fixed, as agreed upon in Attachment "B" for the duration. The fixed overhead rate will not be subject to adjustment. The maximum salary rate established for this contract is \$60.00 per hour and shall remain at this rate for the duration of this contract. Overtime and premium labor rates are not permitted without prior authorization from SANBAG.
- 3.4 Not used.
- 3.5 The Cost principles set forth in Part 31 of the Federal Acquisition Regulation (FAR) as constituted on the effective date of this contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by amendment of the Contract.

3.5.1 The CONSULTANT agrees to comply with Federal procedures in

accordance with 49 CFR, part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by CONSULTANT to SANBAG.

3.5.3 Any subcontract, entered into as a result of this contract shall contain all of the provisions of this Section 3.5.

3.6 Any Services provided by the CONSULTANT not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from SANBAG. It shall be CONSULTANT's responsibility to recognize and notify SANBAG when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with Article 12, Changes.

Article 4 Availability of Funds

This Contract is awarded on the contingency of availability of funds. The obligation of SANBAG is conditioned upon the availability of funds which are allocated and available for the payment of such an obligation. If funds are not allocated and available for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by SANBAG at the end of the period for which funds are available. When SANBAG becomes aware that any portion of Services which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve SANBAG from its obligation to compensate CONSULTANT for Services performed pursuant to this Contract. No penalty shall accrue to SANBAG in the event this provision is exercised.

Article 5 Taxes, Duties, Fees

Except to the extent expressly provided otherwise elsewhere in this Contract, CONSULTANT shall pay when due, and the compensations set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONSULTANT, and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

Article 6 Invoicing and Payments

6.1 Except to the extent expressly stated otherwise elsewhere in this Contract, the compensation of CONSULTANT as provided herein shall be payable in monthly

payments, forty-five (45) calendar days after receipt by SANBAG of an invoice prepared in accordance with instructions below.

- 6.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by SANBAG and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four to five week period. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT'S sole expense.
- 6.3 CONSULTANT shall furnish evidence, satisfactory to SANBAG, that all labor and materials furnished and equipment used during the period covered by the invoice have been incurred. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence.
- 6.4 CONSULTANT shall include a statement and release with each invoice, satisfactory to SANBAG, that CONSULTANT has fully performed Services pursuant to this Contract for the period covered, and that all claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 6.5 CONSULTANT shall submit separate progress invoices, within each task order, (marked with SANBAG'S contract and job numbers) to SANBAG each month within fifteen (15) calendar days after the cutoff date. Progress invoices shall include request for payment for Services (including additional Services authorized by SANBAG's contract manager) completed by CONSULTANT during each progress billing period. The cutoff date for CONSULTANT'S progress invoice shall be consistent from each period. Each task order progress payment shall be for cost incurred plus the **earned** fee completed by CONSULTANT, as determined by SANBAG in accordance with the terms of this Contract and approved by SANBAG, as of the working day nearest the mutually agreed cutoff date. Earned fee shall be calculated by multiplying percent complete for the applicable task order by the **prime consultant's direct labor and overhead** for each task order. Payment shall not be construed to be an acceptance of Services.
- 6.6 CONSULTANT shall forfeit the fee portion of the progress payment for the period if CONSULTANT fails to submit an invoice within sixty (60) calendar days after the cutoff date.
- 6.7 CONSULTANT shall forfeit all costs incurred if CONSULTANT fails to submit an invoice within one-hundred twenty (120) calendar days after the cutoff date.

Article 7 Documentation and Right of Audit

CONSULTANT shall keep and maintain all books, papers, records, accounting records including but not limited to all direct and indirect costs allocated to Services, files, accounts, reports, cost proposals with backup data, and all other material relating to Services. Consultant shall upon request, make all such materials available to SANBAG or its designee at any reasonable time during the term of the contract and for three (3) years from the date of final payment to CONSULTANT, for auditing, inspection and copying. CONSULTANT shall insert in each of its subcontracts the above requirement.

Article 8 Responsibility of the Engineer

- 8.1 The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all calculations, drawings, notes and other services furnished by the CONSULTANT under terms of this Contract.
- 8.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, the CONSULTANT shall, as an integral part of its services, employ quality control procedures that identify potential risks and uncertainties related to construction of the project and the services performed by CONSULTANT within the areas of CONSULTANT services and expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the contracted Scope of Services, should the CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk and uncertainties, CONSULTANT shall immediately document such matters and notify SANBAG of said circumstances and related concerns. CONSULTANT shall also similarly notify SANBAG in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds design assumptions and could precipitate a failure. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SANBAG to understand and evaluate the magnitude and effect of the risk and uncertainties involved.

Article 9 Reporting Requirements/Deliverables

All Reports and deliverables shall be submitted in accordance with Attachment "A".

Article 10 Permits and Licenses

CONSULTANT shall (without additional compensation) keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Services.

Article 11 Technical Direction

- 11.1 Performance of Services under this Contract shall be subject to the technical direction of the SANBAG Contract Manager, or his designee, as identified in Attachment "A", Scope of Services, attached to this Contract. The SANBAG Contract manager will identify his designee, in writing to CONSULTANT, with the notice to proceed and subsequently with any changes during the contract period. The term "Technical Direction" is defined to include, without limitation:
 - 11.1.1 Directions to the CONSULTANT which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Services.
 - 11.1.2 Provision of written information to the CONSULTANT which assists in the interpretation of drawings, reports, or technical portions of Service description.
 - 11.1.3 Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the CONSULTANT to SANBAG or Caltrans under the contract.
- 11.2 Technical direction must be within the Scope of Services in the contract. The SANBAG Contract Manager or designee does not have the authority to, and may not, issue any technical direction which:
 - 11.2.1 Constitutes an assignment of additional Services outside the Scope of Services;
 - 11.2.2 Constitutes a change as defined in the contract clause entitled "Changes";
 - 11.2.3 In any manner causes an increase or decrease in the Contract's estimated cost or price or the time required for contract performance;
 - 11.2.4 Changes any of the expressed terms, conditions or specifications of the contract; or
 - 11.2.5 Interferes with the CONSULTANT'S right to perform the terms and conditions of the contract.
 - 11.2.6 A failure of the CONSULTANT and Contract Administrative Manager to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes".

- 11.3 All technical directions shall be issued in writing by the SANBAG Contract Manager or his designee.
- 11.4 The CONSULTANT shall proceed promptly with the performance of technical directions duly issued by the SANBAG Contract Manager or his designee, in the manner prescribed by this article and within his authority under the provisions of this clause. If, in the opinion of the CONSULTANT, any instruction or direction by the SANBAG Contract Manager or his designee, falls within one of the categories defined in 11.2.1 through 11.2.5 above, the CONSULTANT shall not proceed but shall notify the Contract Manager in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contract Manager to modify the contract accordingly. Upon receiving the notification from the CONSULTANT, the Contract Manager shall:
 - 11.4.1 Advise the CONSULTANT in writing within thirty (30) days after receipt of the CONSULTANT'S letter that the technical direction is or is not within the scope of the contract "Changes" clause of the contract;
 - 11.4.2 Advise the CONSULTANT within a reasonable time that SANBAG will or will not issue a written change order.

Article 12 Changes

- 12.1 The Services shall be subject to changes by additions, deletions, or revisions thereto by SANBAG. CONSULTANT will be advised of any such changes by written notification from SANBAG describing the change.
- 12.2 Promptly after such written notification of change is given to CONSULTANT by SANBAG, CONSULTANT and SANBAG will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly. If sufficient funds exist in the contingency, SANBAG may, at its option, provide written direction to CONSULTANT that contingency funds may be used for compensation for the change. If CONSULTANT and SANBAG are unable to agree on the compensation change, the CONSULTANT may make a claim per Article 20, CLAIMS. CONSULTANT shall have no obligation to perform the changes, and shall not be entitled to compensation for Services performed on such changes, prior to the execution of the change order relating to the changes required by SANBAG.
- 12.3 CONSULTANT shall not suspend performance of this Contract during the negotiation of any change order, except as may be directed by SANBAG. CONSULTANT shall perform all changes in accordance with all the terms of this contract.

Article 13 Federal and State Mandatory Provisions

13.1 Equal Employment Opportunity/Nondiscrimination

- 13.1.1 In connection with the execution of this contract, the CONSULTANT shall not discriminate directly or indirectly against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selections of training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the Equal Opportunity clause.
- 13.1.2 The CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applications shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- 13.1.3 The CONSULTANT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the CONSULTANT's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 13.1.4 The CONSULTANT shall comply with all provisions of Executive Order No 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60), and shall permit access to its books, records, and accounts by SANBAG and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 13.1.5 In the event of the CONSULTANT'S noncompliance with the Equal Opportunity clause of this contract or any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR, Part 60).

13.1.6 The CONSULTANT shall include the provisions of paragraphs (13.1.1) through (13.1.6) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 112346 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60), so that such provisions will be binding upon each subcontract or vendor. The CONSULTANT shall take such action with respect to any subcontract or purchase order as SANBAG may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by SANBAG, the CONSULTANT may request SANBAG to enter into such litigation to protect the interests of SANBAG.

13.2 Handicapped Workers

13.2.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Article 14 Conflict of Interest

- 14.1 The CONSULTANT agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further agrees that in the performance of this Agreement, no person having any such interest shall be employed.
- 14.2 No portion of the funds received by the CONSULTANT under this Agreement shall be used for political activity or to further the election or defeat of any candidate for public office.

Article 15 Key Personnel

- 15.1 The personnel specified in 15.2 below are considered to be essential to Services being performed hereunder. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services which are the

responsibility of key personnel to other personnel, the CONSULTANT shall notify SANBAG reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the project. Diversion or reallocation of key personnel shall be subject to written approval by SANBAG. SANBAG also reserves the right to approve proposed substitutions for key personnel.

15.2 Key Personnel are:

Article 16 Representations

CONSULTANT agrees with SANBAG that services supplied by CONSULTANT in performance of this Contract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SANBAG that the same shall conform with high professional and engineering principles and standards which are generally accepted in the State of California.

Article 17 Proprietary Rights/Confidentiality

- 17.1 If, as a part of the Contract, CONSULTANT is required to produce Products, then CONSULTANT, if requested by SANBAG, shall deliver to SANBAG the original of all such Products which shall become the property of SANBAG.
- 17.2 All materials, documents, data or information obtained from SANBAG's data files or any SANBAG medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SANBAG. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SANBAG.
- 17.3 Except as reasonably necessary for the performance of Services, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article 17, PROPRIETARY RIGHTS/CONFIDENTIALITY, which are produced by CONSULTANT for SANBAG in the performance and completion of CONSULTANT'S Services under the Contract, until released in writing by SANBAG, except to the extent such materials and information become a part of public domain information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SANBAG'S name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SANBAG.

- 17.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SANBAG unless otherwise agreed to by CONSULTANT and SANBAG.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of SANBAG, any information obtained by CONSULTANT from or through SANBAG in connection with CONSULTANT's performance of this Contract, unless (a) the information was known to CONSULTANT prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same.

Article 18 Terminations

- 18.1 Termination for Convenience. SANBAG shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of Services and shall preserve Work in progress and completed Work, pending SANBAG'S instruction, and shall turn over such Work in accordance with SANBAG's instructions.
- 18.1.1 CONSULTANT shall deliver to SANBAG, in accordance with SANBAG'S instructions, all Products prepared by CONSULTANT or its subcontracts or furnished to CONSULTANT by SANBAG. Upon such delivery, CONSULTANT may then invoice SANBAG for payment in accordance with the terms hereof.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SANBAG as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.
- 18.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT's field tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress and Products in accordance with SANBAG's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause. In the event CONSULTANT shall file a petition in bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, SANBAG may, without prejudice to any other rights or remedies SANBAG may have, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SANBAG, SANBAG may take possession of the Products and finish Services by whatever method SANBAG may deem expedient. A waiver by SANBAG of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 In the event of termination CONSULTANT shall deliver to SANBAG all finished and unfinished Products prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by SANBAG.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SANBAG, satisfactory in form and content to SANBAG and verified by SANBAG. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

Article 19 Stop Work Orders

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, SANBAG shall have the authority to stop any operations of CONSULTANT or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by CONSULTANT.

Article 20 Claims

CONSULTANT shall give SANBAG written notice within seven (7) days after the happening of any event which CONSULTANT believes may give rise to a claim by CONSULTANT for an increase in the Contract Price or in the scheduled time for performance. Within fourteen (14) days after the happening of such events, CONSULTANT shall supply SANBAG with a statement supporting CONSULTANT'S

claim, which statement shall include CONSULTANT'S detailed estimate of the change in Contract Price and scheduled time occasioned thereby. SANBAG shall not be liable for, and CONSULTANT hereby waives, any claim or potential claim of CONSULTANT of which CONSULTANT knew or should have known and which was not reported by CONSULTANT in accordance with the provisions of this Article. CONSULTANT agrees to continue performance of Services during the time any claim of CONSULTANT hereunder is pending. SANBAG shall not be bound to any adjustments in the Contract Price or scheduled time for CONSULTANT's claim unless expressly agreed to by SANBAG in writing and any such adjustments in the Contract Price so agreed to in writing shall be paid to CONSULTANT by SANBAG. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this Contract.

Article 21 Insurance

In order to accomplish the indemnification herein provided for, but without limiting the indemnification, CONSULTANT shall secure and maintain throughout the term of the contract the following types of insurance with limits as shown:

- 21.1 Professional Liability Insurance coverage in an amount not less than \$1,000,000, per claim and in the aggregate. CONSULTANT shall secure and maintain this Insurance throughout the term of this contract and for a minimum of three (3) years after completion and acceptance of Services by SANBAG.
- 21.2 Workers' Compensation Insurance or state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$250,000 limits, covering all persons providing services on behalf of CONSULTANT.
- 21.3 Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$3,000,000 in the aggregate written on an occurrence form.
- 21.4 Comprehensive Automobile Liability Coverage, including owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.
- 21.5 Proof of Coverage. CONSULTANT shall immediately furnish certificates of insurance to SANBAG evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and Fluor Daniel, Inc. (project administration consultant) as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written

notice to SANBAG, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services.

Article 22 Indemnity

CONSULTANT agrees to indemnify, hold harmless, and defend SANBAG, and their officers, employees (past and present), agents, and representatives including Fluor Daniel, Inc., from and against:

- 22.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by SANBAG of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to SANBAG by CONSULTANT in connection with performance of Services; and
- 22.2 Any claim, cause of action, liability, loss, cost or expense, on account of injury to or death of persons or damage to or loss of property which arises out of or is alleged to arise out of the negligence or wrongful acts of CONSULTANT or its subcontractors, employees, or agents, in the performance of Services, and includes any and all expenses, including attorneys' fees, incurred by SANBAG for legal action to enforce CONSULTANT'S indemnification obligations hereunder.

Article 23 Ownership of Drawings and Data

All drawings, specifications reports and other data developed by CONSULTANT under this agreement shall become the property of SANBAG when prepared, whether delivered to SANBAG or not.

Article 24 Subcontracts

- 24.1 CONSULTANT shall not subcontract performance of all or any portion of Services under this Contract, excepting subcontractors listed in the CONSULTANT'S proposal, without first notifying SANBAG of the intended subcontracting and obtaining SANBAG'S approval in writing of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all lower-tier subcontracts.
- 24.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by SANBAG, CONSULTANT shall furnish SANBAG a copy of the proposed subcontract for SANBAG'S approval of the terms and conditions thereof and shall not execute such subcontract until SANBAG has approved such terms and conditions. SANBAG approval shall not be unreasonably withheld.

- 24.3 Approval by SANBAG of any services to be subcontracted and the subcontractor to perform said services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said services.

Article 25 Inspection and Access

SANBAG shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SANBAG, shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

Article 26 Independent Contractor

CONSULTANT is and shall be at all times an independent CONTRACTOR. Accordingly, all Services provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SANBAG shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SANBAG.

Article 27 Precedence

- 27.1 The Contract documents consist of these General Terms and Conditions and Attachment "A", Scope of Services, Attachment AB, Billing Rate Schedule, CONSULTANT's Statement of Qualifications and SANBAG's Request for Qualifications are incorporated herein by reference.
- 27.2 The following order of precedence shall apply:
- 27.2.1 This Contract, its General Terms and Conditions, and Attachments
 - 27.2.2 CONSULTANT's Statement of Qualifications
 - 27.2.3 SANBAG's Request for Qualifications
- 27.3 In the event of an express conflict between the documents listed in Article 27.2, or between any other documents which are a part of the Contract, CONSULTANT shall notify SANBAG immediately and shall comply with SANBAG's resolution of the conflict.

Article 28 Communications and Notices

- 28.1 Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier. Each such notice shall be sent to the respective party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article 28. A change in address may be made by notifying the other party in writing.

For CONSULTANT:

Name:

Address:

Attn:

Phone:

Fax:

For SANBAG:

Name: San Bernardino Associated Governments
Address: 444 North Arrowhead Avenue, Suite 203
San Bernardino, California 92401
Attn: Mr. Gary W. Moon
Phone: (909) 889-8611 x153
Fax: (909) 388-2002

- 28.2 All communications pursuant to or in connection with this Contract shall be marked with SANBAG's contract and job numbers.

Article 29 Disputes

- 29.1 In the event any dispute arises between the parties hereto under or in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the Contract Manager of SANBAG or his duly authorized representative within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of SANBAG. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.
- 29.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

Article 30 Gratuities

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of SANBAG or Fluor Daniel, Inc., gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

Article 31 Review and Acceptance

- 31.1 All Services performed by CONSULTANT shall be subject to periodic review and approval by the representatives of SANBAG at any and all places where such performance may be carried on. Failure of SANBAG to make such review, or to discover defective Work, shall not prejudice the rights of SANBAG at the time of final acceptance. All Services performed by CONSULTANT shall be subject to periodic and final review and acceptance by SANBAG upon completion of all Services.

- 31.2 When Services have been completed and the products have been delivered to SANBAG, CONSULTANT shall so advise SANBAG in writing. SANBAG acceptance shall be based on those provisions set forth in the Scope of Services, Attachment "A" within thirty (30) working days of receipt of such notice, SANBAG shall give CONSULTANT written notice of final acceptance or any Services and Work which have yet to be completed or which are unsatisfactory.
- 31.3 In the event SANBAG does not accept Services or Products as submitted then upon their subsequent completion, CONSULTANT shall again so notify SANBAG, and within the above specified time period SANBAG shall give CONSULTANT written notice of final acceptance or notice that the specified unfinished Services or Products have not yet been completed or are still not satisfactory. In the latter instance, the foregoing procedures with respect to such specified unfinished Services or Products will be repeated. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to SANBAG under this Contract or by law.

Article 32 Safety

CONSULTANT shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT'S operations in the performance of Services hereunder.

Article 33 Assignment

CONSULTANT shall not assign this Contract wholly or in Part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SANBAG. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

Article 34 Amendments

This Contract may only be changed by an amendment duly executed by CONSULTANT and SANBAG except, that changes to the Contract to implement administrative changes such as approved changes in key personnel may be made by administrative amendment signed by CONSULTANT and SANBAG's Contracts Manager or other duly authorized representative.

Article 35 Governing Law and Venue

This Contract shall be subject to the law and jurisdiction of the State of California. The parties acknowledge and agree that this agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action

or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

Article 36 Suspension of Services

- 36.1 SANBAG may at any time, and from time to time, by written Notice ("Suspension of Work Order") to CONSULTANT, suspend further performance of Services by CONSULTANT. Said Suspension of Services Order shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such Suspension of Work Order, CONSULTANT shall promptly suspend further performance of Services to the extent specified, and during the period of such suspension shall properly care for and protect all Services in progress. Such suspensions shall not exceed more than one hundred twenty (120) consecutive calendar days each, nor aggregate more than one hundred eighty (180) calendar days; and, if they do, CONSULTANT may, if it so elects by notifying SANBAG in writing, consider that this Contract has been terminated for convenience of SANBAG. If the Contract has not been so terminated by CONSULTANT, then SANBAG may at any time withdraw the Suspension of Services Order as to all or part of the suspended Services by written notice to CONSULTANT specifying the effective date and scope of withdrawal, and CONSULTANT shall resume diligent performance of Services for which the suspension is withdrawn on the specified effective date of withdrawal.
- 36.2 If CONSULTANT believes that any such suspension or withdrawal of suspension justifies modification of the contract compensation, CONSULTANT may request additional compensation and CONSULTANT and SANBAG will attempt to negotiate a mutually acceptable change in compensation and amend the Contract accordingly. If CONSULTANT and SANBAG are unable to agree on a change in compensation, CONSULTANT may request adjustments to either the Contract Price or the scheduled time for performance in accordance with Article 20, CLAIMS herein. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such suspension.

Article 37 Contingent Fee

The CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SANBAG has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 38 Location of Performance

- 38.1 This contract is awarded based upon CONSULTANT'S agreement and statements contained in CONSULTANT'S proposal/qualifications document, that a minimum of 50 % by dollar value of the total value of this contract and all amendments, including Services performed by subconsultants, shall be physically performed in offices located within San Bernardino County.
- 38.2 Consultant shall include a statement on each invoice as to the cumulative amount of all Services to date, by dollar value that has been performed in offices located in San Bernardino County. CONSULTANT project manager shall certify in writing that this percentage is correct to the best of his/her knowledge.
- 38.3 At completion of this contract should CONSULTANT have failed to achieve the percentage agreed upon in Article 38.1, then CONSULTANT shall forfeit the entire fixed fee including any retention. SANBAG shall have the right at its discretion, to deduct the entire amount of the fixed fee from CONSULTANT'S invoices at any time. Actions taken under this article shall not limit or constitute a waiver or abandonment of any rights or remedies available to SANBAG under this Contract or by law.

Article 39 Entire Document

- 39.1 This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.
- 39.2 No agent, employee or representative of SANBAG has any authority to bind SANBAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 39.3 As this Contract was jointly prepared by both parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either party.

Article 40 Attorney's Fees and Jury Trial Waiver

- 40.1 CONSULTANT and SANBAG hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either CONSULTANT against SANBAG or SANBAG against CONSULTANT on an matter whatsoever arising out of, or in any way connected with, this agreement, the relationship of CONSULTANT and SANBAG, or any claim of injury or damage, or the enforcement of any remedy under any law, statue, or regulation, emergency or otherwise, now or hereafter in effect, regardless of whether such action or proceeding concerns any contract or tort or other claim. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO EACH OF THEM TO ENTER INTO THIS AGREEMENT AND THAT THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS JURY TRIAL WAIVER. THE PARTIES FURTHER AGREE THAT EACH OF THEM HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF ITS OWN CHOOSING IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.
- 40.2 If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Article 22, Indemnity.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

San Bernardino Associated Governments

By: _____

By: _____
Dennis Hansberger
President, SANBAG Board
of Directors

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Rex A. Hinesley
SANBAG Counsel